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LUCY et al. v. KELLY.

March 11, 1915.

[84 S. E., 661.]

1. Partition (§ 73*)—Order of Sale—Determination of Interests of Parties.—Where, in a suit for partition of real estate, one half of which had been devised to testator's widow in fee and the other half for life, with remainder to his heirs at law, all the parties in interest were present, an order directing a sale was not objectionable as premature because the shares of each of the parties had not been ascertained; there being no dispute as to the interests of the parties.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 196-208; Dec. Dig. § 73.* 10 Va.-W. Va. Enc. Dig. 790; 14 Va.-W. Va. Enc. Dig. 811; 15 Va.-W. Va. Enc. Dig. 784.]

2. Partition (§ 79*)—Report of Commissioners—Order of Court.—A report of commissioners in partition that after an examination they fixed the value of one tract at a specified sum and the value of another tract at another sum, and that the first tract should be assigned to a party, and that the other tract should be sold and a specified sum paid to the party as her share, conformed to the decree appointing the commissioners to proceed to go on the lands and divide the tracts having regard to quality and quantity and assign a part to the party, and if a division was impracticable, to report the facts and the value of each tract.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 224, 225; Dec. Dig. § 79.* 10 Va.-W. Va. Enc. Dig. 807; 14 Va.-W. Va. Enc. Dig. 812.]

3. Partition (§ 79*)—Report of Commissioners—Sale.—A report of commissioners in partition, advising a sale on the ground that a partition cannot be had for reasons stated, must, in the absence of evidence to the contrary, be taken as sustaining their conclusion, so that the court may confirm the report and order a sale.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 224, 225; Dec. Dig. § 79.* 10 Va.-W. Va. Enc. Dig. 807; 14 Va.-W. Va. Enc. Dig. 812.]

4. Partition (§ 111*)—Sale—Partition in Kind.—The court, in partition of two tracts of land, may award a tract to a party and order a sale of the other tract and give the party a part of the price to make up any inequality resulting to her in partition in kind.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 401-418; Dec. Dig. § 111.* 10 Va.-W. Va. Enc. Dig. 786; 15 Va.-W. Va. Enc. Dig. 784.]

5. Partition (§ 12*)—Persons Entitled to Sue.—Under Code 1904, § 2568, providing that any person who before partition or sale was

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

lessee shall hold the same of him to whom the land is allotted or sold under the lease, an owner of the fee of undivided half interest and of the other half for life with remainder to third persons may, notwithstanding a lease for a term, maintain partition.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 38-51; Dec. Dig. § 12.* 10 Va.-W. Va. Enc. Dig. 779; 15 Va.-W. Va. Enc. Dig. 782.]

6. Partition (§ 32*)—Persons Entitled to Sue.—Where testator gave to his wife half of his property in fee and the other half for life, with remainder to his heirs, the wife could maintain partition.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 83-86; Dec. Dig. § 32.* 10 Va.-W. Va. Enc. Dig. 779; 15 Va.-W. Va. Enc. Dig. 782.]

7. Partition (§ 74*)—Rights of Infants.—In partition suit, the rights of infants and adults are governed by like principles.

[Ed. Note.—For other cases, see Partition, Cent. Dig. § 209; Dec. Dig. § 74.* 10 Va.-W. Va. Enc. Dig. 791; 14 Va.-W. Va. Enc. Dig. 811.]

8. Partition (§ 111*)—Sale Disposition of Proceeds.—Where in partition commissioners fixed the value of a tract which should be sold, but which was sold for a less sum, the court must apportion the loss between the parties entitled to the proceeds in the proportion of their interests.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 401-418; Dec. Dig. § 111.* 10 Va.-W. Va. Enc. Dig. 795.]

Appeal from Circuit Court, Brunswick County.

Suit by Indiana M. Kelly against J. H. Lucy and others, for partition. From a decree granting relief, defendants appeal. Affirmed.

Buford, Lewis & Peterson, of Lawrenceville, for appellants.
Turnbull & Turnbull, of Lawrenceville, for appellee.

CRAWLEY v. GLAGE.

March 11, 1915.

[84 S. E. 671.]

1. Deeds (§ 68*)—Invalidity—Mental Incapacity of Grantor.—A grantor, not possessing mental capacity to execute a deed, may sue to set it aside as against the objection that the conveyance was made with design to defraud real estate agents out of commission claimed by them.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 149-155; Dec. Dig. § 70.* 6 Va.-W. Va. Enc. Dig. 494; 15 Va.-W. Va. Enc. Dig. 427.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.